



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision

Request for Variance

Edward John, Jr. & Jane Smits/Map 132, Lot 54

August 26, 2014

Applicant: Edward John, Jr. & Jane Smits
127 Fox Blvd.
Massapequa, NY 11758

Location: 77 Richardson Shores Road, Moultonborough, NH (Tax Map 132, Lot 54)

On August 20, 2014, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Edward John, Jr. & Jane Smits (hereinafter referred to as the "Applicant" and/or "Owner") to obtain Variances from MZO Article VII. (E) (1) and Article III. B (3) to permit the construction of a new addition approximately 16'-8" from the property line, where the side setback of 20 ft. is required by the ordinance; and to expand the existing dwelling by 808 sq. ft. where a maximum allowed by the ordinance is 20% or 192 sq. ft. on the parcel located in the Residential Agricultural (RA) Zoning District.


Based on the application, testimony given at the hearings, and additional documentation and plan(s), the Board hereby makes the following findings of fact:

- 1) The property is located at 77 Richardson Shores Road (Tax Map 132, Lot 54).
- 2) The applicants are the owners of record for the lot.
- 3) Edward John, Jr. presented the application for the variance. He used a computer/projector to present 3 dimensional views of the lots, structures and trees for the Board using laser generated images.
- 4) The lot is located in the Residential Agricultural (RA) Zoning District, and the residential use is a use allowed by right in that district.
- 5) The proposal is for the construction of an addition to an existing nonconforming structure. One corner of the proposed addition will protrude 3 ft. 4 in. into the side setback.
- 6) No members of the public spoke on the Variance request.

- 7) Granting the Variances would not be contrary to the public interest as the addition will not alter the essential character of the neighborhood because other properties have the same kinds of encroachment and size similarities.
- 8) Granting the Variances would be consistent with the spirit of the Ordinance because the residential use is a permitted one, therefore expanding the use is not contrary to the intent of the ordinance, as it would not alter the character of the neighborhood or threaten the public health, safety or welfare of the neighbors.
- 9) By granting the Variances, substantial justice would be done because there is no public benefit to be gained, while the loss to the applicant would be great.
- 10) Granting the Variances would not diminish the value of surrounding properties as the property would more closely resemble the neighboring properties development and it is new construction in keeping with the residential character of the neighborhood.
- 11) A literal enforcement of the provisions of the Ordinance will result in unnecessary hardship because the intent of this provision is to sunset nonconforming uses in a zoning district by not allowing them to expand (or capping said expansion), and in the instant case, this is not a nonconforming use, therefore the ordinance provision itself is the hardship. In addition, the oddly shaped building envelope coupled with the skewed building construction, interior layout constraints result in a many-faceted hardship in this case.
- 12) On August 20, 2014, the Zoning Board of Adjustment voted by a vote of five (5) in favor (Stephens, Nolin, Zewski, Bickford, Crowe) and none (0) opposed to grant the request for both variances with two conditions as follows; 1. That a Shore Land Permit be obtained by NH DES; 2. That a septic system design be filed with the Code Enforcement Officer at the time of permitting, and further to close the Public Hearing. They moved to direct Staff to draft a formal Notice of Decision for review and approval for signing at the next meeting.

The Board of Adjustment, on September 3, 2014, approved this formal Notice of Decision language and authorized the Chairman to sign the Notice of Decision and send to the applicant and place same in the case file by a vote of five (5) in favor (Stephens, Nolin, Zewski, Crowe, Bickford), none (0) opposed.

The decision made to Grant the variances on August 20, 2014 shall not take effect until thirty (30) days have elapsed and no request for rehearing has been filed in accordance with RSA 677:2, or that if such request has been filed, it has been dismissed or denied, in accordance with RSA 677:3.


Robert H. Stephens
Chairman, Zoning Board of Adjustment

Date 9-5-2014